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In re Application of	:	
James R. Burroughs et al.	:	DECISION ON
Application No. 09/338,115	:	PETITION UNDER
Filed: June 23, 1999	:	37 CFR § 1.177
For: BATTERY WITH STRENGTH	:	
INDICATOR	:	

The petition for Expedited Decision to Issue Continuation Reissue Application filed June 23, 1999, is before the Office of the Deputy Commissioner of Patent Policy and Projects for consideration. The petition will be treated under 37 CFR 1.183 as a petition to waive the requirements of 37 CFR 1.177, specifically the requirement for simultaneous issuance of multiple reissue patents.

The petition is granted.

DISCUSSION

Original U.S. Patent No. 5,015,544, issued on May 14, 1991.

Reissue Appl. No. 07/963,915 was filed on October 20, 1992.

The present application, Reissue Appl. No. 09/338,115, was filed on June 23, 1999, as a continuation reissue of the '915 application.

A preliminary amendment was filed together with the present '115 application. In the amendment, original claims 1-11 and claims 13-50 of the first reissue (the '915 application) were canceled, and claims 51-62 were added.

This petition has been filed requesting that the Commissioner cause two patents to be issued in accordance with 35 USC § 251 and 37 CFR § 1.177.

According to 37 CFR § 1.177, multiple reissue applications for the same original patent will issue simultaneously, unless otherwise ordered by the Commissioner. Although this rule, as

well as 35 USC 251, calls for multiple reissues to be drawn to separate and distinct parts of the thing patented, the recent decision of *In re Graff*, 42 USPQ2d 1471 (Fed. Cir. 1997) pointed out that divisional/continuation reissues cannot be held to any different standard than that of regular applications. Thus, the language of both the statute and the rule has been interpreted as being permissive, rather than restrictive as to the issue of "separate and distinct parts of the thing patented."

In view of *In re Graff*, *supra*, no separate and distinct requirement is placed on the content of the claims of the several reissue applications with regard to providing a continuation or divisional reissue application. However, where applicable, statutory double patenting or obviousness-type double patenting rejections will be considered as to claim subject matter overlap between the two applications.

The issuance of the present continuation reissue (before the parent '915 reissue) as a replacement for the original patent may cause some confusion and lack of notice to the public.


Accordingly, an amendment cross-referencing each reissue to the other at the first line of the specification of each application will be required.

CONCLUSION

The petition requesting non-simultaneous issuance of the several reissue applications is granted.

The application is being returned to Technology Center 1700 for (1) the examiner's consideration of the question of any double patenting issue which might be present, (2) the Group Director's consideration of the June 23, 1999, petition to make special, and (3) for further action not inconsistent with this decision.

Please direct any questions concerning this communication to Joseph A. Narcavage, Special Projects Examiner, at (703) 305-1795.



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